

# CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS



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September 2, 2021

VIA E-MAIL

The Honorable Antonio Vazquez, Chair  
State Board of Equalization  
P.O. Box 942879  
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## RESULTS OF SURVEY OF COUNTIES RE: REMOTE ASSESSMENT APPEAL HEARINGS

At the request of Member Malia Cohen's office, the California Association of Clerks and Election Officials (CACEO) conducted an informal survey of counties with respect to their experience with remote assessment appeals hearings over the last fiscal year in connection with your Board's upcoming September 22, 2021 meeting. Our members look forward to testifying on their experience at that meeting.

We were asked to provide your Board with information on whether, or to what extent, counties offered taxpayers and assessors remote hearings during the period of July 2020 through July 2021, the quality of their experiences with such hearings, the challenges counties encountered in conducting the hearings, their plans for the future with respect to remote hearings, the timetable for a transition back to in-person hearings or combination of in-person and remote hearings, and what guidance from your Board, if any, would clerks want to recommend as useful in administering an appeal program that might include remote or hybrid hearings. We hope that this letter, along with our testimony at the September 22 hearing, will provide your Board Members with the desired information.

With regard to the survey, county participation was purely voluntary. We did not request counties to provide extensive details, especially with regard to workload statistics, since it is clear that that level of effort would inevitably yield a smaller response or would greatly delay the responses. While such a survey could not possibly provide a complete picture of remote hearing experience throughout the state, it nevertheless provides us with a very good sampling of a combination of large, medium, and small counties.

Item M3b

09/22/21

We used the same breakdown that is used by the California State Association of Counties (CSAC) to differentiate between the counties based on population size. Counties over 900,000 population were designated as large counties. Counties with a population between 200,000 and 900,000 were designated as medium-sized counties. Counties under 200,000 were considered small counties.

Our description of the survey results is limited to the 31 responding counties. Nine of California's 10 large counties, 13 of 18 medium-sized counties, and nine of 30 small counties responded to the survey. All of the responding counties are ones that operate one or more assessment appeals boards. None of the counties where the board of supervisors sits as the county board of equalization responded to the survey.

### **County Experience with Remote Hearings**

Twenty-two of the responding counties (71%) offered some form of remote hearings during the pandemic, either fully remote or hybrid hearings in which some individuals participated remotely, and some participated in person. Seven of the nine responding large counties offered remote hearings; 9 of 13 responding medium-size counties offered them, as did 6 of 9 responding small counties. Nine responding counties did not offer remote hearings at any time.

Although surveyed counties were not specifically asked whether remote hearings involved evidentiary proceedings or merely administrative hearings, stipulations, and other proceedings that do not involve evidentiary matters, the responses seemed to indicate that the counties that offered remote hearings used them for evidentiary matters, not just for administrative matters.

Of the 22 counties that had experience with remote hearings, 13 rated their experience as mostly positive, while 8 rated it as mostly negative; one county gave no opinion. Of the two counties that had only positive comments about remote hearings, one was using remote hearings for administrative matters only and the other county had only held one remote hearing. All others mentioned specific problems and challenges during their use of remote hearings.

Comments regarding the problems and challenges presented by remote hearings that were mentioned by the respondents included the following:

- Remote hearings require more staff – staff that many clerks' offices simply do not have.
- More management, planning, and preparation than in-person hearings.
- Frequent delays in hearings due to interruptions in service and other technology-related problems encountered by the county and, especially, by taxpayers.
- Taxpayers often lack adequate technology platforms.
- Current statutory record retention provisions impose very burdensome copying requirements on the clerk.

- More difficult and slow in sharing evidentiary information, especially rebuttal evidence that cannot be submitted to the clerk before the hearing.
- Because the remote proceedings are slower than in person, remote hearings are typically less productive than in-person hearings.
- Remote hearings make it more difficult to ensure that only legally permitted individuals are present during the portion of hearings involving trade secrets.
- Often the parties fail to comply with deadlines for submitting evidence prior to the hearing and there seems to be little ability for the clerk to effectively enforce those deadlines. This results in unnecessary postponements and continuances not found in in-person hearings.

However, several counties specifically noted that, although remote hearings were challenging administratively, they served the useful purpose of allowing counties to continue to hear and dispose of many pending appeals. This, in turn, allowed the counties to make some headway in reducing their caseload of pending appeals and to provide taxpayers with a hearing more promptly than they would have otherwise been able to do. Further, at least one county developed in-house a very effective online system for document submission (evidence) that streamlined the remote hearing process considerably.

Other positive aspects of remote hearings mentioned by responding counties included:

- Remote hearings facilitated county compliance with orders of health authorities and helps ensure the safety of all participants.
- They allow appeals boards to remain productive despite the closure of many public offices during the pandemic.
- Oftentimes remote hearings can allow a board to have a longer hearing day, since in-person hearings are often cut short by lengthy commute times between home and hearing location.
- Remote hearings are useful and convenient for taxpayers who have access to the appropriate technology.
- For the counties that run more than one appeals board on any given day, remote hearings sometimes allow the clerk to reassign a taxpayer's appeal to another board if the scheduled board for that appeal is running overtime on other appeals.

Responses indicated that slightly more than half of the responding counties will return to offering only in-person hearings, based on their experiences with remote hearings. Many of those have already returned to holding in-person hearings. Twelve counties (39% of respondents) will offer both remote and in-person hearings, although a slight majority of those will only provide remote hearings if specifically requested by a party or only under special circumstances. Two counties will only continue to offer remote hearings temporarily until such time as local health authorities permit in-person hearings. Only one county indicated that it plans to continue to offer remote hearings as its hearing primary format even after resuming in-person hearings.

The most recent survey results appear to validate CACEO's survey of the pros and cons of remote hearings that was conducted in March of this year and which was based on a much smaller sampling.

### **Timetable for Planned Changes to AAB Hearings**

The timetable for changes in AAB hearing formats differs dramatically from county-to-county. Ten of the 22 counties that offered some form of remote or hybrid hearing have already returned to either some or all in-person hearings. Six hope to be able to return to in-person or some combination of formats by this fall. Two may return to using remote hearings early in 2022. Two county responses specifically stated that they will return to in-person hearings when health authorities say it is safe to do so. One county did not indicate their plans.

### **Some Additional SBE Guidance Needed**

Clerks greatly appreciate your Board's guidance with regarding remote hearings over the last year and they are thankful for the opportunity to make recommendations for some additional guidance going forward. All 30 of the counties that responded to a question about additional guidance by your Board, indicated that guidance is necessary in order to preserve the AAB's or clerk's authority to control their calendar and to offer parties an effective and efficient appeal hearing based on local conditions and circumstances the AAB's calendar.

Clerks recognize that counties must offer a hearing that provides all hearing participants with a safe environment that conforms with advice and direction from state and local health officials. However, clerks have found that one aspect of the current Board guidance in LTA 2021-002, in the paragraph entitled "Rights of Hearing Participants" has proven to be problematic and needs revision in order to conform with current and future AAB practices. This section of the LTA gives the impression that "due process" includes the right of a participant to determine the proper format of the hearing and that the clerk or the AAB has no authority to determine the hearing format or formats that the county will offer participants. Applying such logic ultimately means that the AAB has no control or authority over its own processes, including its own calendar. Just as the courts must control their own calendar, so should the quasi-judicial assessment appeals board. Further, such interpretation would mean that even the county board of supervisors, which is empowered by the state's constitution to establish local rules of procedure, could not determine the format of hearings and control the boards' calendars in its own county.

The survey results indicate that the LTA's current guidance that a person may reject the offered hearing format and receive a postponement "as a matter of right" has led to an increase in unnecessary delays in the appeal process, thus hampering the local board in getting through its caseload. This situation is aggravating the transition back to normal operations and, in turn, causing inordinate delays in county's ability to provide their constitutionally required service. We firmly believe that, in the assessment appeal process, "due process" requires counties to provide a meaningful hearing forum with all parties able to direct and cross-examine witnesses, present relevant evidence, have an impartial decisionmaker hear and render a decision, within a reasonable period of time.

Due process requirements cannot deprive AABs from using their constitutionally granted powers to make reasonable rules of procedure, including the format of the hearings it offers. Our proposed LTA language addresses that concern, while preserving the due process rights of the parties.

Further, clerks have some concerns about the guidance in the LTA under the heading "Document Submission". Some responding counties have reported problems in gaining the parties' compliance with respect to the deadlines for submission of evidence to the clerk prior to a remote or hybrid hearing. We must stress that clerks need some time to prepare the evidence they receive so that, on the day of the hearing, the process will go smoothly and as expeditiously as possible. Although the existing guidance on deadlines is good, it should not be a one-size-fits-all provision. The needs of counties with a high volume of appeals may require some additional time beyond that provided in the current LTA if the AAB or clerk has made that determination based on local circumstances. Similarly, clerks with limited staff and equipment also may need additional time beyond what the LTA would seem to permit.

We propose that the attached language be added to a new LTA in a section entitled "Document Submission" that clearly indicates that counties may employ reasonable means that support a fair and orderly administrative remote hearing process that enforces evidence submission time limits applicable to remote hearings in a jurisdiction and that such reasonable enforcement means may take into account the administrative needs and realities of the jurisdiction.

#### **Statutory Change Needed**

As noted above, current assessment appeal records retention requirements in Government Code Sections 25015 and 25105.5 impose burdensome copying requirements when documents and other evidentiary materials are submitted to the clerk electronically. In order to comply with the law, it appears that clerks are required to create a paper copy of documents that are submitted electronically. We recommend that your Board review this matter and seek appropriate legislation next year to address the problem. CACEO clerks are prepared to support such legislation.

Sincerely,



John McKibben, Chair  
CACEO Assessment Appeals Work Group

JM:sg

Attachment

c: Hon. Ted Gaines  
Hon. Malia Cohen  
Hon. Mike Schaefer  
Hon. Betty T. Yee  
Yvette Stowers, Deputy State Controller  
Brenda Fleming, Executive Director  
Henry Nanjo, Chief Counsel  
David Yeung, Deputy Director, Property Tax Department

**CACEO Proposed Changes to SBE LTA 2021-02 (13 January 2021,**  
**superseding LTA 2020-063)**

[Proposed changes to the LTA are indicated in underlining and lined-out language.]

**At Pg. 2:** Rights of Hearing Participants

In the conduct of remote hearings, it is of paramount importance that, as required by Property Tax Rule (Rule) 302, subdivision (a)(1), the appeals board "ensures that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing." As an initial matter, this includes a taxpayer's right to meet either remotely or in-person unless it is infeasible for the appeals board to hold a timely hearing under the particular circumstances using the taxpayer's preferred type of hearing. Participants may, as a general matter, reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled. ~~Where scheduled and where the local appeals board is capable of and offers remote hearings.~~ Therefore, if an appeals board does not schedule a remote or an in-person hearing as desired, the participant may avail themselves of postponement of the hearing in accordance with the provisions of Rule 323. Postponement requests that do not procedurally comply with Rule 323 need not be granted by the appeals board. In this regard, public health or other declared public emergency situation ~~impacts from the pandemic~~ may constitute reasonable cause for a postponement pursuant to the provisions of ~~under~~ Rule 323, subject to the discretion of the appeals board on what is good cause in the circumstances of the appeal. Appeals boards have discretionary authority to offer only in-person hearings, based on that jurisdiction's resources and local circumstances.

Further, the appeals board may require the taxpayer to execute an indefinite time waiver of the Revenue and Taxation Code section 1604(c) hearing time as a condition of granting the requested postponement.

Assessment appeals boards possess constitutional administrative authority and discretion to enforce local appeals board procedures and rules regarding submission of document deadlines utilized in their remote hearing appeals process in their jurisdictions.

Assessment appeals boards possess the fundamental constitutional and statutory administrative authority to provide appeal hearings for the resolution of property tax appeals and ensuring that the participants receive fair and impartial hearings consistent with due process regardless of whether the jurisdiction is offering remote or in-person appeals hearing types.

**At Pg. 2-3:** Document Submission

Counties may require the electronic submission of evidence up to three business days before the commencement of a remote hearing but are encouraged to require only two business days. Counties may require evidence submitted by hard copy to be submitted up to seven days before the commencement of a remote hearing but are encouraged to allow exceptions as appropriate. Counties may employ reasonable means that support a fair and orderly administrative remote hearing process to enforce any evidence time limits applicable to remote hearings in that jurisdiction. Such reasonable enforcement means may take into account the administrative needs and realities of the particular jurisdiction.